IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 16431 of 2007(F)

PETITIONER:

JAYACHANDRAN V.P., LPSA, T.I.H.S.S, NAYANMARMOOLA, VIDYANAGAR, KASARAGOD.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS:

1. THE MANAGER, T.I.H.S.S, NAYANMARMOOLA, VIDYANAGAR, KASARAGOD.

2. THE DISTRICT EDUCATIONAL OFFICER, KASARAGOD.

3. THE DEPUTY DIRECTOR OF EDUCATION, KASARAGOD.

4. STATE OF KERALA-REPRESENTED BY SECRETARY TO GOVERNMENT. GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

Addl.R5. U. JEEVESH KUMAR
PHYSICAL EDUCATION TEACHER, HIGH SCHOOL SECTION
THANBEEHUL ISLAM HIGHER SECONDARY SCHOOL,
NAIMARMOOLA, P.O.VIDYANAGAR, KASARAGODE
(Additional respondent no.5 impleaded as per order in I.A.9769/07 dated 23.7.07)

Addl.R6. THE DIRECTOR OF PUBLIC INSTRUCTION

(Additional respondent no.6 impleaded as per judgment in W.P.(C)16431/07 dated 9.8.07)

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA
GOVERNMENT PLEADER SRI.T.T.MUHAMOOD
SRI.N.SUGATHAN
SMT.VARSHA BHASKAR
SRI.S.PRASANTH (AYYAPPANKAVU)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON 09/08/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the letter issued by the DPI dated 11.11.2005.

Ext.P2: True copy of the representation dated 28.8.2007, by the petitioner before the 1st respondent.

Ext.P3: True copy of the representation submitted before the 2nd respondent dated 28.3.2007.

Ext.P4: True copy of the representation dated 30.4.2007 submitted by the petitioner before the manager.

Ext.P5: True copy of the representation submitted by the petitioner before the Deputy Director dated 21.5.2007.

RESPONDENT'S EXHIBITS:

Ext.R1(a): True copy of the names of teachers.

Ext.R1(b): True copy of the order No.EM3/62640/06/ DPI/D.Dis. of the Director.

Ext.R1(c): True copy of the order No.EM3/46374/06/DPI/D.Dis. Of the Director.

Ext.R1(d): True copy of the order No.EM3/62638/06/DPI/Dis. Of the Director.

Ext.R1(e): True copy of the order No.EM3/62637/06/DPI/D.Dis of the Director.

Ext.R1(f): True copy of the order No.EM3/62644/06/DPI/K.Dis. Of the Director.

Ext.R1(g): True copy of the order No.EM3/62644/06/DPI/D.Dis. Of the Director.

Ext.R1(h): True copy of the order No.EM3/62645/06/DPI/D.Dis. of the Director.

Ext.R1(i): True copy of the G.O.(Rt)No.3776/2006/G.Edn. Of the Government.

Ext.R1(j): True copy of the order No.B1/15009/06 of the Deputy Director of Edn.

Ext.R1(k): True copy of the list of protected teachers.

Ext.R1(l): True copy of the letter of the manager.

Ext.R1(m): True copy of the letter of the manager.

Ext.R1(n): True copy of the declaration of the manager.

Ext.R5(a): True copy of Appointment order dated 20.6.1991.

Ext.R5(b): True copy of the list of protected teachers for the year 2006-07 of Kasargod District.

Ext.R5(c): True copy of letter dated 19.3.2007 of the Manager.

Ext.R5(d): True copy of proceedings dated 1.4.2007 of the manager.

Ext.R5(e): True copy of appointment order dated 1.6.2007.

// True copy //

P.A. To Judge

A.K.BASHEER, J.

W.P.(C)No.16431 OF 2007

Dated this the 9th day of August, 2007

JUDGMENT

Petitioner is stated to be working as Lower Primary School Assistant in T.I. Higher Secondary School at Nayanmarmoola in Kasargod district under the management of respondent no.1. He claims that he is entitled to be promoted to the post of HSA (Social Studies) by virtue of Rule 43 of Chapter XIV A KER. He takes exception to the action of the manager in proposing to appoint a protected teacher as HSA (Social Studies) ignoring the legitimate claim of the petitioner. Ext.R5(C) is stated to be the communication sent by the manager to the Deputy Director of Education, Kasargod. The primary prayers in the writ petition are extracted hereunder:

> i) issue a writ of mandamus or any other writ or direction to the first respondent to promote the petitioner to the post of HSA (Social Science) in the existing vacancy.
>
> ii) to command the respondents 2 and 3 to pass appropriate orders on Exts.P3 and P5 directing promotion of the petitioner to the post of HSA (Social Science) in the existing vacancy in the first respondent's school.

iii. To declare that the petitioner is entitled to get promotion to the post of HSA (Social Science) in the existing vacancy.

iv) to command the respondents 1 to 3 not to depute or appoint a protected hand to a vacancy in respect of which there is a claimant under Rule 43 Chapter XIV A for promotion.

2. Counter affidavits have been filed by the manager, respondent no.3 as well as additional respondent no.5. Learned counsel for the parties have been heard at length.

3. It is contended on behalf of the petitioner that so long as his claim under Rule 43 subsists, the manager could not have attempted to act against the statutory mandate by trying to bring in a protected teacher. It is on record that manager has sought to shift a Physical Education Teacher working in the Upper Primary Section of the School to the High School Section. But it is seen from the counter affidavit of respondent no.3 that the District Educational Officer has declined approval for shifting. Learned counsel for the manager submits an appeal has been preferred against the said order before the Director of Public Instruction, which is still pending.

4. It is submitted by the learned Government Pleader that petitioner being the senior most Assistant teacher having requisite qualification for appointment as HSA (Social Science), the legitimate claim for promotion cannot be overlooked by the manager. It is also submitted that one vacancy each of HSA (English), HSA (SS) and HSA (PET) had arisen in the school on March 31, 2007. The manager had made fresh appointments of HSA (English) and HSA (PET) and requested for permission to appoint a protected teacher in the vacancy of HSA (Social Science). It is also the case of the party respondents that being a newly upgraded school, the manager is bound to appoint one protected teacher in the school. The manager in this contention submits that the pre-upgraded section of the school is not bound to appoint a protected teacher. There is a qualified PET teacher in the Upper Primary Section and he is now shifted to High School Section considering his seniority and experience and also for the reason that he would be eligible to get the emoluments and allowances attached to the post of PET in the Higher Secondary Section.

5. But it is not in dispute that the manager had taken steps to fill up the vacancy of HSA (SS) by appointing a protected hand. The manager admits that he had in fact sought approval for such an appointment.

6. Government Pleader points out that in fact there is one protected teacher (PET) is infact available who can be accommodated in the school. He refers to Ext.R1(k) in this regard in which sl.no.4 is stated to be the eligible protected teacher who can be appointed in the school in question. It is seen from Ext.R1(k) that sl.no.4 Smt. Mini Joseph is working in two schools on clubbing arrangement. The manager raises objection to this suggestion for the reasons stated in the preceding paragraph. It is further contended by the learned Government Pleader that the exercise now being attempted by the manager is only to defeat the rightful claim of the petitioner.

7. Having heard learned counsel for the parties and having regard to the entire facts and circumstances, I am of the view that the entire issue has to be considered by the Director of Public Instruction on the basis of the relevant records.

Admittedly the manager against the order passed by the District Educational Officer, declining approval for shifting, is pending before the Director. Therefore, the Director of Public Instruction is impleaded in this writ petition as additional respondent no.6.

8. The Director has to necessarily peruse the entire relevant records and find out whether the claim of the petitioner is sustainable and also as to whether the stand taken by the manager is justified in the eye of law. These are matters which have to be considered by the Director in accordance with law. This shall be done by the Director, as expeditiously as possible, at any rate, within six weeks from the date of receipt of a copy of this judgment. Necessarily respondent no.6 has to ensure that the petitioner, respondent no.1, additional respondent no.5 and all others who are likely to be affected by any order that may be passed, are afforded sufficient opportunity to be heard before any decision is taken. Till such time, a decision is taken as directed above, the interim order passed by this court shall remain in force. The manager shall send a copy of the memorandum of appeal which is stated to have been filed by him

to the petitioner within one week from today by registered post. It will be open to the petitioner to submit a detailed reply before the Director raising all his contentions with regard to the claim made by him under Rule 43.

Writ petition is disposed of as above.

A.K.BASHEER, JUDGE

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